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January 23, 2003

Ms. Michelle Carey  
Chief, Competition Policy Division  
Wireline Competition Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte*  
CC Docket Nos. 01-338, 96-98, 98-147

Dear Ms. Carey:

On behalf of NuVox, I am writing to provide further information for the Commission's consideration in the above-referenced dockets regarding access to EELs. Specifically, I am writing to provide additional explanation with respect to those services that NuVox characterized as "LEC services" in its January 15, 2003 *ex parte* Letter to Christopher Libertelli, Legal Advisor to Chairman Powell.

In the January 15, 2003 *ex parte*, NuVox continued to express its steadfast opposition to the continuation of use restrictions on special access to EEL conversions and to the proliferation of use restrictions beyond that limited context.<sup>1</sup> If, however, the Commission was inclined to perpetuate use restrictions in any form,<sup>2</sup> NuVox encouraged the Commission to avoid numerous

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<sup>1</sup> NuVox remains adamantly opposed to use restrictions, as the record shows that they are not needed and that they have had detrimental impact beyond any benefit they could have provided. In short, the so-called "safe harbors" have been abused by ILECs that have sought to inhibit CLECs' use of EELs. Renewing or extending use restrictions will only create further opportunity for ILEC gaming and will inhibit competitors' use of UNEs, as well as severely constrain the benefits that consumers realize as a result of that use.

<sup>2</sup> In this regard, we continue to emphasize that any restriction must be tied to a finding based on record evidence that no impairment exists in a certain context.

Ms. Michelle Carey  
January 23, 2003  
Page Two

pitfalls entailed with a “primary local provider” standard and to instead “focus on whether a CLEC seeks to use the EEL to effectuate its general offer of any, some or all ‘LEC services’”. NuVox defined LEC services to include “local voice, exchange access, Internet access, and point-to-point local data services.” These particular services are included in the definition of LEC services because they are the services that NuVox, other competitive LECs, the Bells and other incumbent LECs offer in direct competition with each other. Like the incumbent LECs, NuVox provides LEC services to end users, as well as to ISPs and IXC. This point is perhaps best illustrated by the fact that no Bell company needed an affiliate of any kind to provide these services prior to the 1996 Act and no Bell company needed Section 271 authority to provide these LEC services. In short, local voice, exchange access, Internet access, and point-to-point local data services are LEC services – not interexchange or IXC services.

Notably, those services which fall into the basket of LEC services are a mix of intrastate and interstate services – with “local voice” service being perhaps the most familiar example of an intrastate service (although it can be interstate) and “exchange access” being perhaps the most familiar example of an interstate service (although it is often intrastate). The all data services included in LEC services also vary in this regard, with the FCC having determined that Internet access (when viewed as an end-to-end service, with the LEC service component being but one input) is predominantly interstate and with point-to-point local data services being predominantly intrastate (like local voice).

With respect to these data services, it is significant to note that both are essentially point-to-point local data services. By that, we mean that the LEC offers data transmission between two points within a designated local calling area. Banks, car dealers and other small businesses often purchase such services and do so for a variety of reasons including the establishment of a LAN or connection back to centralized location. For example, banks often have a need to connect automated teller machines located throughout a local area. A service linking a bank branch on K Street and one on M Street would be a point-to-point local data service. A service between a bank branch on K Street and one on a street in Arlington, Virginia also would constitute a point-to-point local data service. A similar service between the bank’s K Street branch and headquarters in Charlotte, North Carolina would not be a point-to-point local data service, but instead would be classified on an end-to-end basis as a point-to-point interexchange data service. This type of end-to-end service is offered by IXCs, not LECs, which typically provide only exchange access at the originating and terminating ends. As a result, we note that the Bells traditionally have provided most point-to-point local data services, while the big IXCs traditionally have provided most point-to-point interexchange data services.<sup>3</sup>

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<sup>3</sup> Although our definition is technology neutral, we note that frame relay, ATM and IP technology have been used in the provisioning of both point-to-point local data services and point-to-point interexchange data services.

Ms. Michelle Carey  
January 23, 2003  
Page Three

“Internet access” includes a LEC service component that is a point-to-point local data service. In providing the service, LECs typically provide data transmission between two points within a designated local calling area. One of those points is an ISP. In some instances, LECs also serve as ISPs or have affiliates that do so. Regardless of whether the ISP is independent or owned/affiliated, the LEC service offering is completed upon establishment of a connection to an ISP (regardless of what the ISP does next with the call, which may involve the provision of information services through connections to locally cached servers or through connections to distant servers reached via transmission facilities provided by IXC). Thus, by including Internet access in the basket of LEC services, we focus on the LEC service component of that offering and note that the LEC service may, in this context, be used in a manner that is in certain respects similar to exchange access (*i.e.*, as a local input to another service offering, albeit one provided by an ISP often in conjunction with an IXC, rather than by an IXC in conjunction with another LEC).

For NuVox and many, if not most LECs, the LEC service component of Internet access is the most critical LEC data service in terms of current revenues and anticipated growth. As with each LEC service, if NuVox were not able to use EELs or were restricted in its use of EELs to provide Internet access as part of its integrated T1 service or stand-alone broadband T1 data service offerings, it would be at a distinct competitive disadvantage vis-à-vis the incumbent LECs who are not similarly hobbled. For years, NuVox and other CLECs have used UNEs to provision such services. Most often, customers use NuVox’s services to replace analog offerings from the incumbent LECs.<sup>4</sup> With UNEs, NuVox and other CLECs have brought broadband down-market to small and medium sized business customers who are now realizing its benefits for the first time. Without UNEs, or with restricted UNEs, NuVox would be forced to increase prices dramatically or abandon the small business market.<sup>5</sup>

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<sup>4</sup> Thus, the question of whether incumbent LEC special access revenues ought to be protected is not an issue, as there generally are no special access revenues to protect in this context. NuVox also notes that, even in the case of conversions from special access to EELs, where there are special access revenues at issue, NuVox generally has been forced to order special access instead of UNEs due to incumbent LEC provisioning gambits (*i.e.*, no facilities) or their refusal to make “new EELs” available in accordance with the Supreme Court’s *Verizon* decision and FCC Rules (which require unrestricted access to UNEs in every context other than the interim exception created for conversion of special access circuits to EELs). Thus, in these circumstances, the incumbent LECs’ special access revenues do not represent legacy special access revenues associated with the traditional IXCs, but rather, ill-gotten gains hardly worthy of perpetuating.

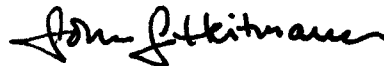
<sup>5</sup> Across NuVox’s markets (30 markets in 13 SBC and BellSouth states), special access rates are roughly three times higher than comparable UNE DS1 rates.

KELLEY DRYE & WARREN LLP

Ms. Michelle Carey  
January 23, 2003  
Page Four

It is our hope that this submission clarifies any questions you or your staff may have with respect to those services included in the term "LEC services". Please do not hesitate to contact me, if I can provide additional explanation or responses to additional concerns.

Respectfully submitted,



John J. Heitmann

JJH:cpa

cc: Christopher Libertelli  
Matt Brill  
Jordan Goldstein  
Dan Gonzalez  
Lisa Zaina  
Bill Maher  
Jeff Carlisle  
Tom Navin  
Jeremy Miller  
Julie Veach  
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